

I certify that the attached is a true and correct copy of HB 1348 which was filed of record on 3.2.93

and referred to the committee on:

Licensing & Administrative Procedure

Betty Mackay

Chief Clerk of the House

FILED MAR - 2 1993

h B. No. 1348

By Yarbrough

A BILL TO BE ENTITLED

AN ACT

relating to regulation of the use of lead in plumbing applications; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 5, Health and Safety Code, is amended by adding Chapter 346 to read as follows:

CHAPTER 346. LEAD IN PLUMBING FIXTURES

Sec. 346.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Plumbing Examiners.

(2) "Commission" means the Texas Water Commission.

Sec. 346.002. RULEMAKING. The board and commission may adopt joint rules, and may adopt the Uniform Plumbing Code or Southern Standard Building Code, to implement this chapter.

Sec. 346.003. USE OF LEAD IN PLUMBING FIXTURES PROHIBITED.

(a) A person may not use or cause or permit the use of a faucet, pipe, or pipe fitting that contains more than 8.0 percent lead for installing or repairing:

(1) a public water supply; or

(2) plumbing that provides water for human consumption and is connected to a public drinking water system.

(b) A person may not use or cause or permit the use of solders and flux that contain more than 0.2 percent lead for installing or repairing:

1 (1) a public water supply; or
2 (2) plumbing that provides water for human consumption
3 and is connected to a public drinking water system.

4 (c) The board and commission may adopt joint rules
5 authorizing the use of lead joints necessary to repair cast-iron
6 pipe.

7 Sec. 346.004. CRIMINAL OFFENSE. (a) A person commits an
8 offense if the person violates Section 346.003 or a rule adopted
9 under this chapter.

10 (b) An offense under this section is punishable by a fine of
11 not less than \$50 or more than \$200.

12 (c) Each violation of Section 346.003 is a separate offense
13 and each day of a continuing violation is a separate offense.

14 Sec. 346.005. ENHANCED CRIMINAL PENALTY. If it is shown on
15 the trial of an offense under Section 346.004 involving a violation
16 of Section 346.003 that the defendant has been convicted of an
17 offense under Section 346.004 for such a violation that occurred
18 during the 12 months preceding the date on which the offense being
19 tried occurred, the offense is punishable by:

- 20 (1) a fine of not less than \$200 or more than \$1,000;
21 (2) confinement in jail for not more than 30 days; or
22 (3) both a fine and confinement.

23 Sec. 346.006. INJUNCTION; CIVIL PENALTY. (a) If it appears
24 that a person has violated, is violating, or is threatening to
25 violate Section 346.003 or a rule adopted under this chapter, the
26 attorney general at the request of the board and commission, or a
27 county or municipal attorney of the municipality or county in which

1 a violation has occurred, is occurring, or is threatened, may
2 institute a civil suit for:

3 (1) injunctive relief to restrain the person from the
4 violation;

5 (2) the assessment and recovery of a civil penalty for
6 a violation; or

7 (3) both injunctive relief and a civil penalty.

8 (b) The penalty may not exceed \$5,000 a day for each
9 violation. Each day of a continuing violation may be considered a
10 separate violation for the purpose of penalty assessment.

11 (c) The commission and board are indispensable parties in a
12 suit brought by a county or municipal attorney under this section.

13 (d) A suit brought under this section may be brought in the
14 county in which the violation occurred, is occurring, or is
15 threatened, the county in which the defendant resides, or Travis
16 County.

17 (e) A civil penalty recovered in a suit brought by the
18 attorney general under this section shall be deposited in the state
19 treasury to the credit of the general revenue fund. One-half of a
20 civil penalty recovered in a suit brought by a county or municipal
21 attorney under this section shall be deposited in the state
22 treasury to the credit of the general revenue fund and the
23 remaining one-half shall be paid to the county or municipality that
24 brought the suit.

25 (f) In a suit under this section, the court may grant, after
26 notice and hearing, the board and commission, or the county or
27 municipality, any injunctive relief warranted by the facts,

1 including a temporary restraining order, temporary injunction, or
2 permanent injunction. The court may not require the board and
3 commission or the county or municipality to provide a bond or other
4 undertaking in connection with the request for injunctive relief.

5 Sec. 346.007. ADMINISTRATIVE PENALTY. (a) The board or
6 commission may assess an administrative penalty against a person
7 who violates Section 346.003 or a rule adopted by the board and
8 commission under this chapter.

9 (b) The board and commission shall adopt joint rules
10 relating to notice, hearing, and other procedures for assessing an
11 administrative penalty under this section.

12 (c) The penalty may not exceed \$5,000 a day for each
13 violation. Each day of a continuing violation may be considered a
14 separate violation for the purpose of penalty assessment.

15 SECTION 2. This Act takes effect September 1, 1993, and
16 applies only to conduct occurring on or after the effective date of
17 this Act.

18 SECTION 3. The importance of this legislation and the
19 crowded condition of the calendars in both houses create an
20 emergency and an imperative public necessity that the
21 constitutional rule requiring bills to be read on three several
22 days in each house be suspended, and this rule is hereby suspended.

HOUSE COMMITTEE REPORT

1st Printing

93 APR 21 AM 10:41
HOUSE OF REPRESENTATIVES

By Yarbrough

H.B. No. 1348

A BILL TO BE ENTITLED

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amended by adding Chapter 346 to read as follows:

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Examiners.

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(a) A person may not use or cause or permit the use of a faucet,
pipe, or pipe fitting that contains more than 8.0 percent lead for
installing or repairing:

(1) a public water supply; or

(2) plumbing that provides water for human consumption
and is connected to a public drinking water system.

(b) A person may not use or cause or permit the use of
solders and flux that contain more than 0.2 percent lead for
installing or repairing:

1 (1) a public water supply; or
2 (2) plumbing that provides water for human consumption
3 and is connected to a public drinking water system.

4 (c) The board and commission may adopt joint rules
5 authorizing the use of lead joints necessary to repair cast-iron
6 pipe.

7 Sec. 346.004. CRIMINAL OFFENSE. (a) A person commits an
8 offense if the person violates Section 346.003 or a rule adopted
9 under this chapter.

10 (b) An offense under this section is punishable by a fine of
11 not less than \$50 or more than \$200.

12 (c) Each violation of Section 346.003 is a separate offense
13 and each day of a continuing violation is a separate offense.

14 Sec. 346.005. ENHANCED CRIMINAL PENALTY. If it is shown on
15 the trial of an offense under Section 346.004 involving a violation
16 of Section 346.003 that the defendant has been convicted of an
17 offense under Section 346.004 for such a violation that occurred
18 during the 12 months preceding the date on which the offense being
19 tried occurred, the offense is punishable by:

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21 (2) confinement in jail for not more than 30 days; or

22 (3) both a fine and confinement.

23 Sec. 346.006. INJUNCTION; CIVIL PENALTY. (a) If it appears
24 that a person has violated, is violating, or is threatening to
25 violate Section 346.003 or a rule adopted under this chapter, the
26 attorney general at the request of the board and commission, or a
27 county or municipal attorney of the municipality or county in which

1 a violation has occurred, is occurring, or is threatened, may
2 institute a civil suit for:

3 (1) injunctive relief to restrain the person from the
4 violation;

5 (2) the assessment and recovery of a civil penalty for
6 a violation; or

7 (3) both injunctive relief and a civil penalty.

8 (b) The penalty may not exceed \$5,000 a day for each
9 violation. Each day of a continuing violation may be considered a
10 separate violation for the purpose of penalty assessment.

11 (c) The commission and board are indispensable parties in a
12 suit brought by a county or municipal attorney under this section.

13 (d) A suit brought under this section may be brought in the
14 county in which the violation occurred, is occurring, or is
15 threatened, the county in which the defendant resides, or Travis
16 County.

17 (e) A civil penalty recovered in a suit brought by the
18 attorney general under this section shall be deposited in the state
19 treasury to the credit of the general revenue fund. One-half of a
20 civil penalty recovered in a suit brought by a county or municipal
21 attorney under this section shall be deposited in the state
22 treasury to the credit of the general revenue fund and the
23 remaining one-half shall be paid to the county or municipality that
24 brought the suit.

25 (f) In a suit under this section, the court may grant, after
26 notice and hearing, the board and commission, or the county or
27 municipality, any injunctive relief warranted by the facts,

1 including a temporary restraining order, temporary injunction, or
2 permanent injunction. The court may not require the board and
3 commission or the county or municipality to provide a bond or other
4 undertaking in connection with the request for injunctive relief.

5 Sec. 346.007. ADMINISTRATIVE PENALTY. (a) The board or
6 commission may assess an administrative penalty against a person
7 who violates Section 346.003 or a rule adopted by the board and
8 commission under this chapter.

9 (b) The board and commission shall adopt joint rules
10 relating to notice, hearing, and other procedures for assessing an
11 administrative penalty under this section.

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13 violation. Each day of a continuing violation may be considered a
14 separate violation for the purpose of penalty assessment.

15 SECTION 2. This Act takes effect September 1, 1993, and
16 applies only to conduct occurring on or after the effective date of
17 this Act.

18 SECTION 3. The importance of this legislation and the
19 crowded condition of the calendars in both houses create an
20 emergency and an imperative public necessity that the
21 constitutional rule requiring bills to be read on three several
22 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable Pete Laney
Speaker of the House of Representatives

4-19-93
(date)

Sir:

We, your COMMITTEE ON LICENSING AND ADMINISTRATIVE PROCEDURES

to whom was referred H.B. 1348 by YARBROUGH have had the same under consideration and beg to report
(measure)

back with the recommendation that it

- (X) do pass, without amendment.
() do pass, with amendment(s).
() do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (X) yes () no An author's fiscal statement was requested. () yes (X) no

A criminal justice policy impact statement was requested. () yes (X) no

An equalized educational funding impact statement was requested. () yes (X) no

An actuarial impact statement was requested. () yes (X) no

A water development policy impact statement was requested. () yes (X) no

() The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

House Sponsor of Senate Measure _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Wilson, Ch.	X			
Kubiak, V.C.	X			
Cain	X			
Campbell	X			
Carter	X			
Gallegos	X			
Goolsby	X			
Hilbert	X			
Jones				X
Thompson, G.	X			
Yarbrough	X			

Total

10 aye
0 nay
0 present, not voting
1 absent

R. Wilson
CHAIRMAN

COMMITTEE ON LICENSING
AND ADMINISTRATIVE
PROCEDURES

BILL ANALYSIS

H.B. 1348 by Yarbrough

BACKGROUND

Both the Texas Department of Health and the Texas Water Commission have the responsibility for regulating public drinking water systems. In addition the installation of plumbing and the testing of these systems are regulated under the State Board of Plumbing Examiners 1947, as amended. Plumbing codes or ordinances are mandated by the State Plumbing Law in cities of 5,000 or more, the same codes and ordinances are permitted in cities under 5,000, but are required of most Municipal Utility Districts (MUD's) by the Texas Department of Health, 1988 rules and regulations for water districts. To properly enforce this law the state agencies must work together to insure compliance.

Because lead is particularly dangerous to children and pregnant women, the federal government has passed laws to prohibit lead contamination in drinking water. The Lead Contamination Control Act requires the chilled water equipment in every school to be tested and replaced if there is lead contamination. In addition, the 1986 amendments to the federal Safe Drinking Water Act prohibit lead containing materials in all public water systems. This law requires the U.S. Environmental Protection Agency (EPA) to withhold 5 percent of a state's public water supply grant funding if the state is found to be ineffective in enforcing the federal law.

Although the Texas Board of Health adopted rules in 1988 to be in compliance with the EPA standards, some questions have arisen as to whether the state's efforts are sufficient. According to previous letters received by the Department from the Director of the EPS's Water Management Division, enforcement in Texas is impeded because there is no state plumbing code to ensure the ban on lead contamination is uniformly applied to all systems, including unincorporated areas and small municipalities which do not have local lead-banning ordinances.

PURPOSE

H.B. 1348 prohibits the use of faucets, pipes, and pipe fittings containing more than 8 percent lead and on solders and flux containing more than 0.2 percent lead for installation or repair in public, residential or nonresidential facilities providing water for human consumption; provides criminal and administrative penalties.

RULEMAKING AUTHORITY

This bill grants joint rulemaking authority to the Texas State Board of Plumbing Examiners and the Texas Water Commission.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 5, Health and Safety Code, by Chapter 346, LEAD IN PLUMBING FIXTURES as follows:

CHAPTER 346. LEAD IN PLUMBING FIXTURES

Sec. 346.001. DEFINITIONS. (1) Defines "Board" as the Texas State Board of Plumbing Examiners.

(2) Defines "Commission" as the Texas Water Commission

Sec. 346.002. RULEMAKING. Defines the joint responsibilities of the Board and Commission. Defines the adoption of "Codes" to be implemented.

Sec. 346.003. USE OF LEAD IN PLUMBING FIXTURES PROHIBITED. (a) Prohibits the use of faucets, pipes and pipe fittings containing more than 8.0 percent lead or solders and flux containing more than 0.2 percent lead for installation or repair of a public water supply or of any plumbing in a residential or non-residential facility that provides water for human consumption and is connected to a public water supply system on or after September 1, 1993.

(b) Prohibits a person from causing, allowing, or permitting a use prohibited by Subsection (a).

(c) Grants rulemaking authority to the board and commission for the rules authorizing the use of lead joints necessary to repair cast-iron pipe.

Sec. 346.004. CRIMINAL OFFENSE. Establishes that an offense for failure to comply with Section 346.003 or rules adopted under this chapter is a misdemeanor punishable by a fine of not less than \$50 or more than \$200; establishes that each day of a continuing violation is a separate offense and each failure to comply with Section 346.003 or a rule adopted under this chapter is a separate offense.

Sec. 346.005. ENHANCED CRIMINAL PENALTY. Enhances the penalty for a second conviction within a year of the first offense as a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000, confinement in jail for no more than 30 days or both.

Sec. 346.006. INJUNCTION; CIVIL PENALTY. Requires a civil penalty not to exceed \$5,000 for each violation and for each day of continuing violation for a person who violates Section 346.003 or a rule under this chapter; authorizes the board and commission, a county or a municipality to bring civil suits for both injunctive relief and civil penalty; requires the attorney general at the board or commission's request to bring and conduct a suit in the name of the state for injunctive relief, a civil penalty, or both; permits the suit to be brought in Travis County, the county where the defendant resides or the county in which the violation or threat of violation occurred; requires one-half of a civil penalty recovered in a suit brought by a county or municipal attorney under this section to be deposited in the state treasury to the credit of the general revenue fund and the remaining one-half shall be paid to the county or municipality that brought the suit. In a suit under this section, the court may grant, after notice and hearing, the board and commission, or the county or municipality, any injunctive relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction; the court may not require the board and commission of the county or municipality to provide a bond or other undertaking in connection with the request for injunctive relief.

Sec. 346.007. ADMINISTRATIVE PENALTY. (a) Requires an administrative penalty to be assessed by the board or commission against a person who violates Section 346.003 or rule adopted by the board and commission.

(b) Establishes board and commission rules relating to notice, hearing, and other procedures for assessing an administrative penalty under this section.

3

(c) Establishes the penalty may not exceed \$5,000 a day for each violation and that each day of a continuing violation may be considered a separate violation for the purpose of penalty assessment.

SECTION 2. Effective date: September 1, 1993

SECTION 3. Emergency clause.

SUMMARY OF COMMITTEE ACTION:

H.B. 1348 was heard in a Public Hearing on April 19, 1993. The following person registered in favor of the bill: Mr. Larry Brown, Program Dir., Tx. Rural Water Assn.; The Chair recognized the following person as a Resource Witness: Mr. James E. Pope, Engineer, Tx. Water Commission. No one testified against the bill. Rep. G. Thompson moved that the full Committee adopt H.B. 1348, and that it be reported favorably to the full House with the recommendation that it do pass and be printed. The motion prevailed by the following vote: Ayes: (10), Nays: (0), Absent: (1).

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
73rd Regular Session

March 26, 1993

TO: Honorable Ron Wilson, Chair
Committee on Licensing and Administrative
Procedures
House of Representatives
Austin, Texas

IN RE: House Bill No. 1348
By: Yarbrough

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1348 (relating to regulation of the use of lead in plumbing applications; providing penalties) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would amend the Health and Safety Code to regulate the use of lead in plumbing applications, including establishing criminal, civil, and administrative penalties. The bill would require the Texas State Board of Plumbing Examiners and the Texas Water Commission to adopt joint rules relating to notice, hearing, and other procedures for assessing administrative penalties.

The Texas State Board of Plumbing Examiners would anticipate an increase in costs associated with hearings before the State Office of Administrative Hearings in the amount of approximately \$1,000 per case for approximately 2 cases per year. The Texas Water Commission would anticipate additional workload associated with rule adoption and hearings proceeding; however, the amount of workload cannot be accurately determined.

No significant fiscal implication to the State is anticipated.

The fiscal implication to units of local government cannot be determined.

Source: State Board of Plumbing Examiners, Natural Resources Conservation Commission;
LBB Staff: JO, JWH, DF, RSM, JOL

H. B. No. 1348

By Yonduch

A BILL TO BE ENTITLED
AN ACT

relating to regulation of the use of lead in plumbing applications;
providing penalties.

MAR 2 1993

1. Filed with the Chief Clerk.

MAR 3 1993

2. Read first time and Referred to Committee on

LICENSING + ADMINISTRATIVE PROCEDURES

APR 19 1993

3. Reported favorably ^(as amended) ~~(as substituted)~~ and sent to Printer at 4:10 pm

APR 21 1993

4. Printed and distributed at 10:41 AM

APR 20 1993

APR 21 1993

5. Sent to Committee on Calendars at 1:45 pm

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, _____ present, not voting).

7. Motion to reconsider and table the vote by which H.B. _____ was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____ present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, _____ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. _____ was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

12. Ordered Engrossed at _____

13. Engrossed.

14. Returned to Chief Clerk at _____

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on _____

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

20. Ordered not printed.

21. Regular order of business suspended by (a viva voce vote.) (_____ yeas, _____ nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules
suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION: OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments.)
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record
(Substitute) Vote) (Record Vote of _____ yeas, _____ nays, _____ present,
not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____

HOUSE OF REPRESENTATIVES
93 APR 21 AM 10:41

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